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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2409 OF 2006

Shri Sunil Baburao Shegaonkar & Ors. ... Petitioners

V/s.

Pimpri-Chinchwad Municipal
Corporation & Ors. ... Respondents

Mr.Sunil Shegaonkar Petitioner No.1 in person
Mr.N.V. Walawalkar with G.H. Keluskar and Ajay Suryawanshi for Respondent Nos.1 & 3
Mr.Nitin Pradhan for Respondent No.2 and 4
Mr.S.R. Borulkar, P.P. with Ms.R.M. Gadhvi, APP, for State

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

JUDGMENT RESERVED ON: **APRIL 24, 2007**
JUDGMENT PRONOUNCED ON: **MAY 4, 2007**

JUDGMENT (PER SMT.MHATRE, J.):

. The Petitioners claim to be public spirited citizens. They have approached this Court under Article 226 of the Constitution of India praying that a CBI enquiry be ordered into the allegations made by them in the Petition. The Petition is directed against the Municipal Corporation of Pimpri-Chinchwad, the Mayor and Commissioner of the Corporation and the Chairman of the Standing Committee, the Respondent Nos.1 to 4 respectively. According to the Petitioners, Respondent Nos.2, 3 and 4 have purchased cars for their use, well beyond the value sanctioned by the State Government for officers of autonomous bodies. The Petitioners contend that Respondent Nos.2, 3 and 4 as officers of Respondent

No.1 i.e., Pimpri-Chinchwad Municipal Corporation (hereinafter referred to as the 'Corporation') could have purchased cars worth Rs.4 lacs only for use in their official capacity.Despite this, the General Body of the Corporation, has permitted the purchase of cars worth Rs.9.66 lacs and 11.23 lacs which amounts are well beyond the stipulated figure.

2. The Petitioner No.1, who has argued the matter in person on behalf of the other Petitioners, has submitted before us that the Government Resolution dated 3.10.2003 permits Secretaries and other officials who have not been named in categories 1 to 10 are entitled to the use of a car for official purposes worth Rs.4 lacs. This Resolution according to the petitioners, was applicable to all autonomous bodies, public corporations, etc. By purchasing cars worth more than the permissible limit, the Petitioners contend the respondents have committed criminal breach of trust. According to the Petitioners by doing so, the respondents have blatantly misused the public funds in their charge while other pubic works are being neglected by the respondents. The Petitioners apprehend that the local police would not take any action under the criminal laws against the respondents and have approached this Court for a direction that the CBI should investigate into the allegations in the Petition and lodge an FIR accordingly so that the criminal

machinery would be set in Motion.

3. The Petitioners have relied on the judgment of the Apex Court in the case of *The Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v/s. K.S. Jagannathan & Anr.,* **AIR 1987 SC 537** by pointing out that in para 20, the Apex Court has observed that when a public authority fails to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such a discretion malafidely the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue a writ of mandamus against the Government or the public authority.

4. Mr.Pradhan, appearing for Respondent Nos.2 and 4, submits that the purchase of cars made by the respondents has been made in accordance with law and therefore, the petition deserves to be dismissed. He submits that under section 76 of the Bombay Provincial Corporations Act, the Municipal Corporation is entitled to acquire both movable and immovable property. According to the learned Advocate, under section 95 of the Act, the Commissioner i.e., Respondent No.2 herein, has to prepare the annual budget estimates each year. These budget estimates are to be placed before the Standing Committee. After approval of the Standing

Committee, the general body is required to approve of such budget estimates. It is only thereafter that any purchase can be made by the Corporation. According to the learned Counsel, once there is an approval of the budgetary estimates made by the Commissioner by the Standing Committee and the general body, nobody has a right to question the expenses if made within that stipulated budgetary allowance. According to the learned Counsel, once a Resolution has been passed by the Standing Committee and approved by the General Body, the State Government can rescind the resolution or the order of the Corporation under section 451 of the Act. He submits that the State Government in the present case has not found it fit to do so and, therefore, the purchase of the cars though beyond Rs.4 lacs, is legal and cannot be questioned by the Petitioners. Mr.Pradhan also points out that a civil suit has been filed by the Petitioners before the JMFC raising the same contentions as are raised in the present Petition. Interim relief was sought by the Petitioners which has been refused by the Court. Mr.Pradhan then points out that neither section 403 nor sections 406 or 409 of the IPC are attracted in the present case. He submits that neither Respondent No.2 nor Respondent No.4 have used cars for their personal aggrandisement and, therefore, there is no criminal breach of trust or misappropriation of funds. The learned advocate relies on the case of *All India Institute of Medical Sciences Employees' Union*

(Regd.) v/s. Union of India & Ors., **(1996) 11 SCC 582** where the Supreme Court has observed that since the Petitioner in that case had not adopted the procedure available under the Criminal Procedure Code, it could not approach the High Court by filing a writ petition seeking a direction to conduct an investigation by the CBI as the CBI is not required to investigate into all or every offence. Similar view has been taken by the Supreme Court in *Minu Kumari v/s. State of Bihar,* **(2006) 4 SCC 359**.

5. Mr.Walawalkar, learned Counsel appearing for Respondent Nos.1 and 3, while adopting the arguments of Mr.Pradhan, points out that the Government Resolution dated 3.10.2003 upon which the Petitioners seek to rely is not binding on the Corporation as it has not been issued under the statutory powers of the Government. He further points out that the Corporation is is a body for local self government and the Government Resolution has not been marked to the Corporation or any bodies for local self government. The Government has thought it fit to apply the resolution only to autonomous bodies besides making it applicable to public Corporations. He, therefore, submits that the writ petition which is based on a resolution of 3.10.2003 deserves to be dismissed.

6. The learned Public Prosecutor, appearing for the

State Government, submits that while the Petitioners are correct that the Resolution does apply to Municipal Corporations, there is no need to take any criminal action in the matter. According to him, the policy decisions taken by the Government to avoid wasteful expenditure and enforcing economy in expenditure is binding on the Municipal Corporation as a public policy and as such the Corporation is not immune from such policy decisions/instructions. He submits that the Commissioners of certain Municipal Corporations were under a genuine impression that the directives of the Government about the consolidated fund do not apply to the municipal fund and hence, the respondents have acted beyond the resolution. He, therefore, submits that the resolution passed by the Corporation approving of the purchase of Toyota Corolla cars which are priced at about Rs.11 lacs or any other car beyond the permissible Rs.4 lacs, will be suspended. The procedure for rescinding the Resolution after considering the say of the Municipal Corporation will be adopted. In such circumstances, urges the learned Public Prosecutor.

7. Before we proceed further we feel it necessary to remark about the over zealous attitude of the Petitioner No.1 while the Petition was being heard. After giving him a patient hearing Petitioner No.1 insisted on filing written arguments which we refused to accept. He therefore had the temerity to route the

written arguments to us by filing them before the learned Chief Justice. We have perused the written arguments. Rather than elaborating the oral arguments of Petitioner No.1, the written arguments contain details of what transpired in the matter before earlier benches. In fact the Petitioner No.1 had tried to mention these details when he argued before us. We did not permit him to disclose these details as what is discussed when a matter is heard by one bench is not binding on another bench. We deprecate such tactics adopted by Petitioner No.1.

8. The Government Resolution of 3.10.2003 speaks about a decision having been taken by the Government sanctioning a price limit within which cars are to be purchased for various dignitaries and officials of the Government like the Governor, Chief Minster, Deputy Chief Minister, Chief Justice, Ministers, Judges of the High Court, Secretaries in the Government, etc. Category 11 of this Resolution stipulates that Rs.4 lacs is the limit placed on cars which can be used by the Secretaries and other officials entitled to the use of the vehicle in their official capacities This Resolution has been marked to various authorities. Significantly, it has not been marked to the bodies for local self government. As aforesaid, it is the case of the respondents that this Resolution does not bind them in any manner as it is not marked to them nor does it

govern the purchases made by the bodies of local self government. An affidavit has been filed by Dr.Jairaj Moreshwar Phatak, Principal Secretary to Government of Maharashtra, Urban Development Department. Para 3 of this affidavit reads thus:

> 3. I say that the aforesaid Government Resolution is binding on the Municipal Corporation I say that there are a number of policy instructions, which although they do not form part of the municipal Acts are binding on the Municipal Corporation and in fact, are implemented by them. Instances of such matters pertain to reservation policies for the officers and staff, policy instruction for reservations for S.C. S.T., reservations for handicapped person, service condition and pension rules, funding under Jawaharlal Nehru national Urban Renewal Mission etc. In the similar way, the policy instructions regarding avoidance of wasteful expenditure and enforcing economy in expenditure is binding on the Municipal Corporation as a public policy. There is no provision of laws under which they seek immunity from such policy instructions.

Thus, According to the Government, the Resolution is binding on the Municipal Corporation and the respondents ought to have acted within the parameters set by the Resolution.

9. Without going into the controversy as to whether the Government resolution is binding on the respondents or whether a government resolution can override the budget estimates of the Municipal Corporation, there is no question of any criminal breach of trust on the part of the respondents. The respondents have acted in

accordance with the BPMC Act. Section 76 of the Act empowers the Corporation to acquire property both movable and immovable. An annual budgetary estimate is expected to be made by the Commissioner of the Corporation. The Standing Committee is then required to consider the estimates and proposals made by the Commissioner after making such modifications as necessary to the budgetary estimates. When the budgetary estimates framed by the Standing Committee are ready, they are placed before the General Body. The General Body is then required to finally adopt the budget estimates in accordance with section 100 of the BPMC Act. Once such budget estimates are passed, nobody can call in question the estimates. In the present case, by a Resolution which was passed on 29.11.2005 by the Standing Committee, it was decided to purchase 3 Toyota Corolla cars worth Rs.9.66 lacs each and another car worth Rs.11.23 lacs. This resolution was approved by the General Body by its Resolution of 27.3.2006. Clearly, therefore, the respondents followed all the statutory requirements while purchasing the cars. If the Government found the Resolution for purchase of such cars to be a wasteful expenditure of public money, it could have under the powers vested in it under section 451 of the BPMC Act suspended or rescinded the resolution of theGeneral Body.The Government has thought it fit not to do so till today. However, in the affidavit filed by the Principal Secretary, Urban

Development Department, it is stated that the Government has now decided to take action in the matter. Para 8 of this affidavit reads thus:

> "8. I say that as the Hon'ble High Court has directed Government to inform the court of the action that Govt. intends to take against the officers and office bearers responsible for purchasing cars beyond the permissible limit.
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> However, I say that the Commissioners were under an impression that directives about consolidated fund do not apply to municipal fund. I further say that in the first instance the Resolution passed by the Pimpri-Chinchwad Municipal Corporation for purchase of Toyoto Corolla cars, (which are priced at about 11 lakhs) will be suspended. Similar action will be taken in respect of other Municipal Corporations who have purchased such cars after the date of the Govt. Resolution. Necessary procedure will be adopted for rescinding the Resolution after considering their say."

In such circumstances, we do not feel there is any need to pass any orders on this writ petition to initiate a CBI enquiry.

10. Apart from this, as we had mentioned earlier, no offence has been made out under sections 403, 406 or 409 of the IPC. Criminal Breach of Trust has been defined in section 405 of the IPC. Section 405 reads thus:

> 405. Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching

> the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"
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> Explanation 1: A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him, and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.
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> Explanation 2: A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to the Employee's State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, shall be deemed to have been entrusted with the amount of the contribution so deducted by him, and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

The main ingredients of this section are: (i) a person must be entrusted the property or should have dominion over the property (ii) the person so entrusted must (a) dishonestly misappropriate or convert into to his own use or (b) dishonestly use or dispose off that property or willfully suffer any other person to do so in violation of any law and/or legal contract. Thus, there must be a positive act of misappropriation, conversion, user and disposal of the property. In this case we cannot conclude that there has been misappropriation of

the property since the property i.e., the cars have been purchased in the name of the Corporation and are assets of the Corporation. Neither can it be said that there is a conversion of the property to the personal use of Respondent Nos.2,3 and 4 as the cars remain the assets of the Corporation. As regards the user of the property, Respondent Nos.2 to 4 are using the cars in their official capacity and not as their personal property. Therefore, none of the ingredients of the criminal breach of trust are satisfied. The Petitioners wish to press into service section 409. It reads as under:

> 409. Criminal breach of trust by public servant, or by banker, merchant or agent: Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The essence of this section is that there must be criminal breach of trust as defined under section 405 of IPC by a public servant before it can be said that the public servant is guilty of the offence punishable under section 409 of the IPC. Since we have already held that the action of the Respondents does not constitute criminal breach of trust, section 409 is not attracted to fact situation of this case.

11. The submission of the Petitioner that in view of the judgment in the case of *The Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v/s. K.S. Jagannathan & Anr. (supra),* this Court is empowered to take action under Article 226 of the Constitution of India to issue a mandamus cannot be faulted. However, it must be noticed that we are dealing with a criminal writ petition where the prayer sought is that a CBI enquiry should be initiated into the defaults on the part of the respondents as they have, according to the Petitioners, committed offences punishable under section 409 of the IPC. In our opinion, it would be incorrect to give any relief to the Petitioners as they have presumed that the local police would not take any action in the matter and have rushed to this Court for a direction that a CBI enquiry should be initiated. As we have stated earlier, we do not find that the Petition discloses that any offence has been committed, prima facie, by the Respondents and hence, the submission of the Petitioners cannot be accepted. In para 5 of the *All India Institute of Medical Sciences Employees' Union (Regd.) v/s. Union of India & Ors. (supra),* the Supreme Court has observed thus:

> 5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above

procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for.

12. This judgment has been followed by the Supreme Court in the case of *Minu Kumari v/s. State of Bihar,* **(2006) 4 SCC 359**, holding that it is only when the complaint, prima facie, discloses that an offence is committed that the Magistrate would take cognisance of the offence and would issue process to the accused. In the present case, the Petitioners have approached this Court without bothering to approach the other authorities.

13. Apart from this, it must be mentioned that the Petitioners have already filed a suit before the JMFC, Pune, questioning the purchase of the cars and hence, there is no need to entertain the Petition. Petition dismissed.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)